Bill 1

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 22-0161	**Date:**	October 12, 2021
Prime Sponsors:		**Bill Status:**	Bill Request
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Bill Topic: **ALTERNATIVE TRANSPORTATION OPTIONS TAX CREDIT**

Summary of Fiscal Impact:

☒ State Revenue
☒ State Expenditure
☐ State Transfer
☒ TABOR Refund
☐ Local Government
☐ Statutory Public Entity

The bill replaces a corporate income tax deduction for expenses related to providing alternative transportation options for employees with a refundable tax credit for similar expenses available to corporate and non-corporate employers. The bill will decrease state revenue through FY 2032-33.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of $93,758 and 0.2 FTE to the Department of Revenue.

Fiscal Note Status: The fiscal note reflects the bill draft requested by the Legislative Oversight Committee Concerning Tax Policy.

Table 1
State Fiscal Impacts Under Bill 1

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue	General Fund	(up to $9.1 million)	(up to $19.6 million)
	Total Revenue	**(up to $9.1 million)**	**(up to $19.6 million)**
Expenditures	General Fund	$93,758	$6,370
	Centrally Appropriated	$2,463	$1,429
	Total Expenditures	**$96,221**	**$7,799**
	Total FTE	**0.2 FTE**	**0.1 FTE**
Transfers		-	-
TABOR Refund	General Fund	(up to $9.1 million)	(up to $19.6 million)

Summary of Legislation

The bill eliminates the current corporate income tax deduction for expenses incurred to provide alternative means of transportation for employees, and replaces this deduction with a new refundable tax credit equal to 50 percent of expenditures incurred by employers to provide alternative transportation options to their employees beginning in 2023. The tax credit is set to expire at the end of 2032.

Alternative transportation includes free or partially subsidized mass transit, and free or partially subsidized ridesharing arrangements. Qualifying expenses as part of a ridesharing arrangement include providing vehicles for ridesharing arrangements, cash incentives to employees to participate in ridesharing arrangements, and administrative costs borne by the employer associated with those ridesharing arrangement. The tax credit is available to both corporate and non-corporate employers.

Background

The current corporate income tax deduction for alternative means of transportation is not widely used by corporate employers. Prior to 2018, a federal deduction for employer expenses related to transportation benefits meant that the state level deduction was largely unusable as corporate employers would only be able to deduct transportation expenses at the state level that they had not already deducted at the federal level. Given the higher federal corporate income tax rates, the benefit to claiming the deduction at the federal level was generally larger than at the state level. As of 2018, this federal deduction was eliminated by the 2017 Tax Cuts and Jobs Act, however, it appears that the state level deduction is still rarely used, according to the Office of the State Auditor, due to the relatively low tax benefit and a lack of knowledge that the deduction exists (https://leg.colorado.gov/sites/default/files/2021-te7_mass_transit_expenses_deduction.pdf).

Assumptions

According to the Bureau of Labor Statistics, approximately 11 percent of employees in the mountain region receive subsidized commuting benefits from their employer, including subsidized parking, public transportation, and carpool benefits. This figure includes government employers, which do not pay state income tax. Approximately 85 percent of employees in Colorado are employed by private employers. As such, this fiscal note assumes that approximately 9.4 percent (11 percent × 85 percent) of private sector employees receive subsidized transit benefits.

Additionally, according to the Bureau of Transportation Statistics, approximately 8.6 percent of employees in Colorado carpool to work and 3.2 percent take public transportation. Based on these figures, this fiscal note assumes that approximately 0.8 percent of employees (9.4 percent x 8.6 percent), or about 23,135 employees, will receive carpooling benefits from their employer in 2023, and 0.3 percent (9.4 percent x 3.2 percent), or about 8,676 employees, will receive public transit benefits from their employer in 2023. Additionally, this fiscal note assumes that all employers offering these benefits will utilize the new alternative transportation tax credit. Further, this fiscal note assumes that the number of employees receiving carpooling and public transit benefits from their employers will increase 10 percent in 2024 as more employers become aware of the new tax credit.

This fiscal note assumes that employers will expend on average $1,149 per employee per year in 2023 and $1,173 in 2024 in qualifying alternative transportation benefits. This figure is based on the estimated price of an annual local RTD pass, reduced by 20 percent to reflect bulk purchase pricing.

Employment and inflation estimates used in this fiscal note are consistent with the September 2021 Legislative Council Staff forecast.

State Revenue

The bill is expected to decrease state revenue by up to $9.1 million in FY 2022-23 (a half-year impact), by up to $19.6 million in FY 2023-24, and by similar amounts in subsequent years until the credit expires in FY 2032-33. These amounts reflect the assumptions stated above; however, the bill's actual revenue impact could be lower depending on the rate at which the credit is utilized. The bill decreases revenue from income taxes, which are subject to TABOR. Revenue impacts on a tax year basis and additional information are presented in Table 2.

Table 2
Revenue Reduction Under Bill 1

	Tax Year 2023	Tax Year 2024
Employees receiving alternative transportation benefits	31,811	35,692
Average annual expenditure per employee	$1,149	$1,173
Total expenditures by employers	$36,537,301	$41,855,743
State Revenue Impact—50 percent credit	**up to ($18,268,650)**	**up to ($20,927,872)**

Employers are estimated to expend approximately $36.5 million in qualifying alternative transportation benefits in tax year 2023 and $41.9 million in tax year 2024. This amounts to forgone state income tax revenue of approximately $18.3 million in 2023 and $20.9 million in 2024 due to the 50 percent tax credit, if the credit is utilized by all eligible employers.

State Expenditures

This bill is expected to increase General Fund expenditures by $96,221 and 0.2 FTE in FY 2022-23, by $7,799 and 0.1 FTE in FY 2023-24, and by similar amounts in subsequent years until the tax credit expires at the end of 2032.

Table 3
Expenditures Under Bill 1

	FY 2022-23	FY 2023-24
Department of Revenue		
Personal Services	$5,139	$4,770
GenTax Programming	$18,000	-
Computer and User Acceptance Testing	$58,425	-
Tax Form Changes	$12,194	-
Data Reporting	-	$1,600
Centrally Appropriated Costs[1]	$2,463	$1,429
Total Cost	**$96,221**	**$7,799**
Total FTE	**0.2 FTE**	**0.1 FTE**

[1] *Centrally appropriated costs are not included in the bill's appropriation.*

Personal services. The Department of Revenue (DOR) will require an additional 0.2 FTE tax examiners in FY 2022-23 and 0.1 FTE tax examiners in FY 2023-24 and subsequent years. The tax examiners are necessary to process and review additional returns claiming the new tax credit and to resolve errors in returns.

Computer programming and testing. For FY 2022-23 only, the bill will require changes to DOR's GenTax software system and additional testing. Changes are programmed by a contractor at a cost of $225 per hour. Approximately 80 hours of computer programming will be required to implement this bill, totaling $18,000. Additional computer and user acceptance testing are required to ensure programming changes are tested and functioning properly, resulting in an additional $58,424 in expenditures by the department.

Tax form changes. For FY 2022-23 only, the bill requires $12,194 in expenditures to implement tax form changes and document management. These expenditures will take place in the Department of Personnel and Administration using reappropriated funds from the Department of Revenue.

Data reporting. Beginning in FY 2023-24, the Office of Research and Analysis within DOR will expend $1,600 each year to collect and report data on the new tax credit.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be $2,463 in FY 2021-22 and $1,429 in FY 2022-23.

TABOR refunds. The bill is expected to decrease the amount of state revenue required to be refunded to taxpayers by up to $9.1 million for FY 2021-22 and up to $19.6 million for FY 2022-23. TABOR refunds are paid from the General Fund. This estimate is based on the September 2021 LCS revenue forecast, which incorporates the revenue impacts of bills passed during the 2021 session. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24.

Effective Date

The bill takes effect January 1, 2023, assuming no referendum petition is filed.

State Appropriations

For FY 2022-23, the bill requires a General Fund appropriation of $93,758 and 0.2 FTE to the Department of Revenue. From this amount, $12,194 should be reappropriated to the Department of Personnel and Administration.

State and Local Government Contacts

Information Technology	Personnel	Revenue